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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision:15.11.2023

Rakesh Kumar

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek Singla, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.31 dated 13.02.2014 under Sections 420/419/467/471/120-B IPC registered at Police Station Sadar Amritsar, District Amritsar.

2. The contents of the FIR (Annexure P-1) read as under:-

“Myself, Varinder Kumar Inspector is posted as SHO at PS Sadar Amritsar that Ramesh Kumar S/o Balkar Chand R/o Naianwali street Mustafabad Amritsar came to police station, Sadar, Amritsar and made request to for issuance of DO regarding production of passport in Tatkal Scheme and he at that time had produced his residential certificate issued by Tehsildar, Amritsar-II on 21.10.2013, voter card issued by Indian Election Commission, identity card to prove his identity and residential address. On the basis of aforesaid documents DO had been issued by myself for the production of passport to Ramesh Kumar under tatkal scheme on 14.11.2013, but now a few days back, secret informer by coming before me informed

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me to the effect that Ramesh Kumar who has got issued DO from me for the production of passport under Tatkal Scheme who is having his real name as Rakesh Kumar S/o Balkar Singh caste Ravi Dasia is permanent R/o H.No. 1510 Bizlighar, Mustafabad Amritsar. He had got prepared the passport at the said address previously and resided in Hong Kong for about 7-8 years where he was arrested and was to India after remaining in police for 3/4 months. Now Rakesh Kumar in connivance with his elder brother Hardeep Singh after preparing forged documents and after getting prepared passport In name of Ramesh Kumar s/o Balkar Chand Naianwali Street, Mustafabad, Batala Road, Amritsar has again went to Hong Kong. Regarding this information, an investigation was conducted by myself and during investigation, photocopy of voter list for the year 2012 (Vidhan Sabha) was obtained in which Rakesh Kumar s/o Balkar Singh to H.No.1510 is listed as voter at sr no. 1015. A list of Ravidasi community was obtained in which his father Balkar Singh s/o Banta Singh has been shown at Sr. No.95. Voter list of corporation was also obtained and the said voter list shows Rakesh Kumar S/o Balkar Singh, H.No. 1050 as a at Sr no.1060. Hardeep Singh S/o Balkar Singh r/o H.No.480/1 Sunder Nagar, Bizli Ghar, Mustafabad Batala Road, Amritsar got opened Bank account no.758238 in Punjab and Sind Bank, Batala Road, Amritsar Hardeep Singh has also given affidavit In the bank showing the name of his brother as Ramesh Kumar Instead of Rakesh Kumar r/o Naian Wail Gall, Mustafabad, Batala Road, Amritsar to be converted the said account as joint account with Rakesh Kumar and on the said affidavit he has disclosed his identity as Hardip Singh s/o Balkar Chand where as his real name is Hardip Singh son of Balkar Singh. The copy of Ration Card of Balkar Singh s/o Banta Singh was also obtained through Internet and in the list of members Rakesh Kumar s/o Balkar Singh has been mentioned. Record of Amandeep and Jaspreet Kaur sons and

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daughter of Rakesh Kumar at the time of their admission in Saint Sai Sr. Secondary School, Majitha Road, Amritsar has been obtained, Principal of the said school has mentioned the name of Amandeep s/o Rakesh Kumar and Jaspreet Kaur daughter Rakesh Kumar on the letter pad of the school. Copies of birth certificate of above named children issued by Corporation were also issued by the said school in which his name has been mentioned as Rakesh Kumar s/o Balkar. From the secret information and from the enquiry conducted by myself, it has been found that both brothers Rakesh Kumar and Hardip Singh in connivance with each other by preparing forged documents got prepared the passport in the name of Ramesh Kumar s/o Balkar singh upon which offence u/s 420/419/467/4G8/471/120- B IPC is made out. That further investigation is being carried out after the registration of FIR. Today in the area of Sadar Amritsar at 6-15 PM. Sd/- Vevinder Kumar SHO PS Sadar dated 13-02-14”.

3. The learned counsel for the petitioner contends that the allegations of the petitioner travelling abroad on a fictitious passport are baseless. In fact, the petitioner himself was a victim of fraud at the hands of travel agents who had sent him illegally to Hong Kong where he had stayed for the last 08-09 years. As his asylum claim had been rejected, he was forced to come back. He had not been detained at the Airport. It was only on his return that he became aware of the fact that his brother was a co-accused in the impugned FIR. As the petitioner was not a proclaimed offender and was ready and willing to join investigation, he was entitled to the concession of anticipatory bail as his brother Hardeep Singh had been granted the similar relief by this Court vide order dated 12.05.2014 in CRM-

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4. The learned counsel for the State, on the other hand, while referring to the reply dated 01.06.2023 contends that the investigation conducted *prima facie* establishes the offence against the petitioner. The conduct of the petitioner in absconding for the last 10 years does not entitle him to the grant of anticipatory bail as it cannot be believed that the petitioner was unaware of the instant FIR given the fact that his brother Hardeep Singh who was also an accused, was facing trial. As the offence was *prima facie* established and the investigation qua the petitioner was to be taken to its logical conclusion, he was not entitled to the grant of anticipatory bail.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***' has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.***

7. In the instant case, the allegations against the petitioner are that he travelled abroad on a fictitious passport. The FIR was registered way

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back on 13.02.2014 and the petitioner’s brother Hardeep Singh was a co-accused who was facing trial but has since passed away. Therefore, by no stretch of imagination can it be argued that the petitioner was unaware of the pendency of the present FIR. As the offence stands *prima facie* established, the investigation qua the petitioner is to be taken to its logical conclusion. Further, the conduct of the petitioner in absconding for 10 years itself does not entitle him to the grant of anticipatory bail.

8. In view of the above, I find no merit in the present petition and the same stands dismissed.
9. However, the observations made hereinabove are only for the purpose of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

November 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No